

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

LUIS HERNANDEZ,)	
)	
Petitioner,)	
)	No. CV-10-1451-HU
v.)	
)	
UNITED STATES OF AMERICA,)	ORDER
)	
Respondent.)	
_____)	

Luis A. Hernandez
17206 S.E. Julie Place
Portland, Oregon 97236

Petitioner Pro Se

Quinn P. Harrington
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Attorney for Defendant

HAGGERTY, District Judge:

Plaintiff Luis Hernandez seeks to quash a summons issued by the Internal Revenue Service (IRS) to "Wells Fargo Bank National Association." Defendant United States moves to dismiss the

1 petition for lack of subject matter jurisdiction. I grant the
2 motion.

3 Plaintiff initially filed a miscellaneous civil action in this
4 Court on August 31, 2010, which was assigned case number 10-CV-
5 9181, and in which plaintiff sought to quash the same summons as is
6 at issue in this matter. In the miscellaneous case, the United
7 States moved to dismiss for failure to effect proper service and
8 for failure to state a claim. In response to the government's
9 ineffective service argument, plaintiff filed this civil action on
10 November 24, 2010, in order to obtain a summons which he could
11 serve on the government.

12 The right to challenge a third-party IRS summons is created by
13 statute. Under 26 U.S.C. § 7609(b)(1), a person entitled to notice
14 of a summons may petition to quash such a summons, however, such a
15 proceeding must be initiated "not later than the 20th day after the
16 day such notice is given." 26 U.S.C. § 7609(b)(2)(A).

17 The record shows that plaintiff received notice of the summons
18 on August 26, 2010. He filed this action on November 24, 2010,
19 more than twenty days after receiving notice. As such, the United
20 States has not waived its sovereign immunity to this action and it
21 must be dismissed for lack of subject matter jurisdiction. E.g.,
22 Ponsford v. United States, 771 F.2d 1305, 1309 (9th Cir. 1985)
23 ("[T]he twenty-day limit must be strictly construed because it is
24 a condition precedent to the waiver of sovereign immunity. . . [A]
25 district court does not have jurisdiction under § 7609(h)(1) where
26 the plaintiff has failed to comply with the twenty-day filing
27 requirement of § 7609(b)(2)(A)."); Strong v. United States, 57 F.
28 Supp. 2d 908, 915 (N.D. Cal. 1999) (noting that the twenty-day rule

1 is "jurisdictional in nature.").

2 Plaintiff also seeks to consolidate this action with the
3 miscellaneous action. Although his motion is entitled "Motion to
4 Correct Filing," it is clear that he seeks to consolidate the
5 actions. Because, in a separate Opinion and Order, I dismiss the
6 miscellaneous action on the merits, there is no basis for
7 consolidation.

8 CONCLUSION

9 The government's motion to dismiss [7] is granted.
10 Plaintiff's motion to correct filing [4] is denied.

11 IT IS SO ORDERED.

12 Dated this 16th day of December, 2010.

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14 /s/ Ancer L. Haggerty

15 _____
16 Ancer Haggerty
17 United States District Judge
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